CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE DETERMINATION/DE NOVO FINDINGS

Local government:Monterey County

Local Decision:Resolution 02-252 (PC96036) Approved with conditions June 4, 2002 by the

Monterey County Board of Supervisors (See Exhibit E).

Applicant......Dorothy Gorman-Mullins

Project location274 Paradise Road (East side of Paradise Rd. near Lake View Drive) (APN

129-096-029) in Prunedale, North County Planning Area (Monterey County)

(See Exhibits A & B).

Project description.......Allow minor land division of a 17.03-acre parcel into six parcels; grading;

increase water withdrawal from existing well; removal of 28¹ Coast Live oaks, and rezone the parcel from "LDR-B-7(CZ)" to "LDR-B-6(CZ)." The project will also involve grading for new access road, and expansion of

existing water system to serve new lots (new pipeline, etc.).

File documents.....County coastal permit file PC96036; Monterey County Board of Supervisors

Resolution # 02-252; Monterey County Local Coastal Program, including North County Land Use Plan and Monterey County Coastal Implementation

Plan.

Staff recommendation ... Project raises a Substantial Issue; Denial of de novo permit application.

Summary of Staff Recommendation:

The Monterey County Board of Supervisors adopted a mitigated negative declaration and mitigation monitoring plan, and approved a standard subdivision tentative map to allow subdivision of a 17.03-acre parcel into 6 parcels (see Exhibit C); a coastal development permit for grading and water system

California Coastal Commission March 18, 2004 Meeting in Monterey

Since Coastal Commission appeal of the County's approval, the applicant has submitted new information on December 2, 2003 from the biological consultant (dated April 25, 2002) indicating that a total of 61 trees will actually be removed, based on a revised Tentative subdivision map that was apparently created in attempts to minimize impacts to ESHA from the building and septic drainage envelopes. See Exhibit I)

facilities; waiver of policy prohibiting development on slopes greater than 25 percent, removal of 28 coast live oaks², and reclassification from a "LDR-B-7(CZ)" to "LDR-B-6(CZ)" zoning classification. The 17.03-acre parcel contains an existing single-family dwelling, with barn and outbuildings, which would be retained on one of the 6 parcels. New water system facilities would increase water withdrawal from the existing well to support future development of five additional single-family residences.

The project is located on the east side of Paradise Road near Lakeview Drive in the North County planning area of Monterey County (Regional location map and project vicinity maps are shown in Exhibits A and B, respectively). The site contains a number of plant communities, including coast live oak forest/woodland, central coast scrub, and central maritime chaparral, which is considered to be environmentally sensitive habitat. Additionally large portions of the existing parcel area located on slopes greater than 25%.

Staff recommends that the Commission determine that **a substantial issue** exists with respect to the grounds on which the appeal has been filed, and that the coastal development permit be **denied** due to the project's inconsistencies with the LCP. The project presents both a significant procedural issue - because the project was approved prior to Coastal Commission approval of the amendment required to remove the B-7 zoning overlay to allow for subdivision in the first place - and significant substantive issues relevant to LCP policies that require protection of environmentally sensitive habitat areas, water supply and water quality.

Procedural Issue

Subdivision of this parcel is inconsistent with the current certified LDR-B-7(CZ) zoning that prohibits new subdivisions in areas with environmental and public facility constraints, such as lack of water, drainage, and sewage disposal. This parcel is subject to the "B-7" overlay because it is located in an area where groundwater is severely overdrafted,³ where erosion hazards are moderate to high due to steep slopes and erosive soils, and in a rural area where public wastewater discharge facilities are not available.

Prior to the County approval of this CDP, the site was zoned LDR-B-7. The LDR-B-7 zoning classification does not allow subdivision. After the County action on the CDP, the newly subdivided site was zoned LDR-B-6. The LDR-B-6 zoning classification prohibits further subdivisions under any circumstance. Since neither of these zoning designations allow subdivision, it must be assumed that the rezoning process undertaken through approval of the CDP actually had to occur in two steps: rezoning from LDR-B-7 to some zoning designation that would allow for subdivision (eg., LDR or RDR), then rezoning from LDR or RDR to LDR-B-6. Rezoning property in a jurisdiction such as Monterey County, that has a certified LCP, generally must be approved by the Coastal Commission through the LCP

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³ The project site is located in the Highlands South sub-area of the North County Hydrogeological Study Area, where, according to the *North Monterey County Hydrogeologic Study*, prepared for Monterey County Water Resources Agency by Fugro West, Inc, 1995, groundwater overdraft has been documented to be 630 acre feet per year (i.e., groundwater pumping exceeds what was then established as sustainable yield by 630 acre feet per year).



Ibid.

amendment process before the rezoning can be effective. In Monterey County, however, the **addition** of a zoning overlay, initiated for the purpose of preserving or enhancing coastal resources, does not require approval by the Coastal Commission, but the **removal of the B-7 zoning overlay requires an amendment to the LCP**, and as such, requires submittal of an LCP amendment for review and approval by the California Coastal Commission. Furthermore, to be considered for reclassification from LDR-B-7 to a zoning district that allows subdivision, applicants must demonstrate **through the LCP amendment review process** that they have met minimum requirements with respect to, among other things, water supply, drainage, and parcel size and design. No LCP amendment to remove the "B-7" overlay on this site has been submitted to the Coastal Commission, nor has any thorough analysis of the substantive issues listed above been completed. Thus the project is inconsistent with the County's LCP and the Coastal Act that requires LCP amendments for changes to the certified LCP.

Substantive Issues

Even if the LCP had been amended to allow removal of the "B-7" overlay prior to the approval of the subdivision application, other substantive inconsistencies with LCP policies arise, including questions concerning the adequacy of water supply to support new development, and potential adverse impacts to environmentally sensitive habitat areas (ESHA).

ESHA

Currently, over 50% of the parcel is occupied by central maritime chaparral (maritime chaparral), a plant community classified as ESHA by the LCP. Although the subdivision does not create lots that would consist entirely of ESHA, one of the lots (Lot 6) is predominately comprised of ESHA and areas outside of ESHA contain steep slopes; thus the subdivision as approved by the County would result in a parcel that has no buildable site according to the LCP. Additionally, each subdivided lot contains ESHA, and as proposed, building envelopes on 4 of the 5 new lots would be located partially to entirely within ESHA. Two of the proposed new septic drain fields would also be located partly or entirely within ESHA. The LCP requires protection of ESHA by, among other means, prohibiting non-resource dependent development in ESHA, limiting the amount of vegetation and land that can be disturbed, and requiring deed restrictions or permanent conservation easements over ESHA. The LCP also requires that development adjacent to ESHA be compatible with the long-term maintenance of the resource and protect the maximum amount of maritime chaparral. Finally, the LCP only allows new subdivisions where significant impacts to ESHA will not occur.

The project is inconsistent with ESHA protection policies because the project: 1) creates a lot with no buildable location outside of ESHA or slopes over 25%; 2) allows non-resource dependent residential development in ESHA; 3) allows for substantial removal of oak woodland and maritime chaparral habitat; and 4) because it does not protect all ESHA on site with a conservation easement or deed restriction. The project is also inconsistent with policies relevant to development adjacent to ESHA because the project would result in increased fragmentation of the habitat which is not compatible with long-term maintenance of the resource; the building envelopes and septic drainfields have not been designed or sited in a manner that protects the maximum amount of maritime chaparral; and residential development within these areas, along with the associated day-to-day activities that would be likely to



occur could result in significant impacts to ESHA.

Protection of Groundwater Supplies

The project is located within an area of the North County planning area that has been documented to have a serious groundwater overdraft problem, which contributes to saltwater intrusion and lowering of the water table. In areas of limited water supply, the LCP gives certain land uses, such as coastal-dependent uses, recreation and agriculture, priority for water over other uses, including residential development. As a residential subdivision, the project does not fit any of these priority uses.

The project includes improvements to the existing well, which currently serves one single-family residence, to provide a water supply system for five additional single-family dwellings. The LCP requires a hydrologic report for any development that involves intensification of water use. This project, however, was approved without benefit of a site-specific hydrology report, inconsistent with LCP requirements. A hydrology report was finally completed nearly one year after County approval of the project. At present, the existing single-family dwelling uses approximately between 0.43 to 0.75 acre-feet per year (AF/y). The County's approved subdivision of the parcel, into six lots, will result in an increased groundwater demand of approximately 2.15 to 3.75 AF/y, in order to serve five additional single-family residences. While this may not seem to be a large increase in water use, the direct and cumulative affect of these additional water withdrawals will only exacerbate the serious overdraft problems that already exist. Since the source of water is based on an already overdrafted aquifer, it is doubtful that the project can ensure a long-term waster supply. Furthermore, since approval of the project may reduce the long-term availability of water supplies for local coastal priority agricultural and recreational uses, the project is inconsistent with LCP policies designed to protect water supplies for priority uses.

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⁴ This figure is based on the County's own figures for determining estimated water use for single-family residences.



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I. Local Government Action

The Monterey County Board of Supervisors approved a Combined Development Permit, Resolution 02-252 (PC96036), for the project on June 4, 2002. Due to an initially incomplete notice of the County's action, the Final Local Action Notice (FLAN) for this project was received in the Central Coast District office on August 27, 2002 (Exhibit E). The County's action consists of a Coastal Development Permit for a standard subdivision tentative map to allow subdivision of a 17.03 acre parcel into six parcels; Coastal Development Permit for grading and water system facilities (to increase water withdrawal from an existing well) and removal of 28 coast live oaks.⁵ The project will also involve grading for new access road, and expansion of existing water system to serve new lots (new pipeline, etc.). The County's approval also rezoned the property through removal of the B-7 overlay to allow for subdivision of the parcel, and then applied a B-6 overlay to preclude any future subdivisions of the new lots.

County approval of the project also included adoption of a Mitigated Negative Declaration and Mitigation Monitoring Plan, and a waiver to allow development on slopes greater than 25%. The project was subject to 78 special conditions of approval. All permit findings and conditions are included in Exhibit E.

II. Summary of Appellants' Contentions

The appellants have appealed the final action taken by the Monterey County Board of Supervisors (Resolution 02-252), asserting that approval of the project is inconsistent with policies, regulations and ordinances of the Monterey County Local Coastal Plan. The appellants contend that the project is procedurally inconsistent with the LCP because an amendment is required to change the zoning of this parcel in order to allow for the subdivision, and no such LCP amendment was obtained from the Coastal Commission. The appellants also contend that the project has not adequately addressed the issues of the region's limited water supply and the presence of environmentally sensitive maritime chaparral located on the site. Maritime chaparral is considered environmentally sensitive habitat by the LCP. The complete text of the appellants' contentions can be found in Exhibit F.

(Note: The applicant recently submitted a Slope Map, produced on top of a revised Tentative Map of the Tanglewood Estates (shown as revised May 31, 2002, and received in the Central Coast District office December 3, 2003 – see Exhibit J). The Slope Map and revised Tentative Map shows the proposed building and septic system envelopes for the entire subdivision along with areas which have slopes over 25%. In addition to showing slopes over 25%, the only apparent difference between this map and that approved by the County's final action is that the size and location of the building envelopes on Lot 3 and Lot 4 are somewhat smaller. With slopes over 25% shown on the revised Tentative Map, it is also

⁵ Since Coastal Commission appeal of the County's approval, the applicant has submitted new information on December 2, 2003 from the biological consultant (dated April 25, 2002) indicating that a total of 61 trees will actually be removed, based on a revised Tentative subdivision map that was apparently created in attempts to minimize impacts to ESHA from the building and septic drainage envelopes.



apparent that the building and septic system envelopes within Lots 3 through 6 have plenty of space outside the 25% slope area. While Lot 2 is more constrained by steep slopes, neither the building nor the septic system envelopes have been changed from that approved by the County (as shown on the Tentative Map dated May 11, 1996 – see Exhibit C). As analysis in the ESHA section describes, building envelopes on lots 2, 3, and 6 are still located in a way that could adversely impact environmentally sensitive maritime chaparral habitat areas; additionally, Lot 6 is also predominantly comprised of ESHA and areas outside of ESHA contain steep slopes, thus Lot 6 appears to have no buildable site that would be consistent with LCP policies).

III. Standard of Review for Appeals

The grounds for appeal to the California Coastal Commission under Section 30603 of the California Coastal Act are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program and the public access policies of the Coastal Act if the project is located between the first public road and the sea. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. This project is appealable because Section 30603(a)(4) allows for appeals of any development approved by a coastal county that is not designated as the principle permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500). Subdivisions are listed as conditional uses in the LDR zone district and are not permitted at all in the "LDR-B-7" district.

IV. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that <u>a substantial issue</u> exists with respect to the grounds on which the appeals were filed pursuant to Coastal Act Section 30603.

MOTION: Staff recommends a "**NO**" vote on the following motion:

"I move that the Commission determine that Appeal No A-3-MCO-02-077 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.



RESOLUTION:

The Commission hereby finds that Appeal No. A-3-MCO-02-077 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Staff Recommendation on De Novo Permit

The staff recommends that the Commission, after public hearing **deny** the coastal development permit.

MOTION: Staff recommends a "**NO**" vote on the following motion:

"I move that the Commission approve Coastal Development Permit No. A-3-MCO-02-077 for the development as proposed by the applicant."

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

The Commission hereby **denies** a permit for the proposed development as conditioned below, on the grounds that the development does not conform to the policies of the Monterey County certified Local Coastal Program. Approval of the permit will not comply with the California Environmental Quality Act (CEQA) because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

VI. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Description and Location

The project approved by the County, and subject to this appeal, consists of a subdivision of a 17.03-acre lot into 6 parcels (of 3.66, 1.18, 2.11, 3.13, 1.78 and 6.93 acres, respectively). The project also includes a coastal development permit for grading and water system facilities; waiver of policy prohibiting development on slopes greater than 25 percent, removal of 28 coast live oaks, and reclassification from a "LDR-B-7(CZ)" to "LDR-B-6(CZ)" zoning classification.



The subject parcel currently contains an existing 1,072 square foot single-family dwelling, with barn and outbuildings, which would be retained on one of the 6 lots. The five other lots would be located behind the existing residence on the eastern portion of the property and would be sold for future residential development. New water system facilities would increase water withdrawal from an existing well to support future development of five additional single-family residences.

The project is located in North Monterey County roughly 2 miles east of Elkhorn Slough, and on the eastern side of Paradise Road near Lake View Drive (Regional location map and project vicinity maps are shown in Exhibits A and B, respectively; aerial photo of site is shown in Exhibit G). Surrounding parcels are mostly in residential use, and primarily zoned Low Density Residential (minimum parcel size of 1 acre) and Rural Density Residential (minimum parcel size of 5 acres). The land use designation for the parcel is LDR/2.5-10 acres /unit, and the zoning designation is LDR-B-7.

The B-7 overlay prohibits any subdivision of the parcel unless first reclassified. The County's LCP provides that the B-7 overlay may be removed through an LCP amendment certified by the Coastal Commission, if findings can be made that limitations with regards to adequate water supply, drainage, sewage disposal, parcel size and design, and traffic circulation have been removed. However, County approval of this project rezoned the property outside of the normal LCP amendment process required by CIP Section 20.94.030.D.6 and Coastal Act Section 30514.

The project is located within the Highland South sub-basin of the North County Hydrological Study Area (see Exhibit H), which, in 1995, was determined to have a groundwater overdraft of over 630 acre feet per year (due to historical pumping of 5,020 af/yr from this aquifer with a sustainable yield of only 4,390 af/yr)⁶. A 2002 report updated the current overdraft to be 1,705 af/yr⁷. Groundwater overdraft in this area has resulted in saltwater intrusion up to 3 miles inland (see Exhibit L), and has led the County to place moratoriums in the past to prevent new withdrawals from these overdrafted aquifers. Based on the County's estimated water use for a single family dwelling of .43 to .75 acre-feet per year (af/yr), this project would intensify water use to approximately 2.95 af/yr, thus increasing demand from a current estimated average of 527 gallons per day to an estimated average of 2,634 gallons per day.⁸

The parcel also contains a number of plant communities, including coast live oak forest/woodland, central coast scrub, and central maritime chaparral, which is considered to be environmentally sensitive habitat under the LCP. As approved by the County, building envelopes on the subdivided lots would impact maritime chaparral habitat (see Exhibit K) and future development, including roadway access, would require removal of a significant number of Coast live oak trees. While the County's Final Local Action Notice for the project (Resolution # 02-252) indicates 28 coast live oak trees will be removed, subsequent information received regarding the biological impacts of the project indicate that 61 trees

Average gallons per day are based on averaging the County's estimated water use for a single-family residence of .43 - .75 AF/y, which averages to .59 AF/y, which converts to 527 gallons per day. The proposed projects estimated water use is based on the County's figures and averages to 2.95 AF/y, which converts to 2,634 gallons per day. (Formula: to convert acre-feet to gallons, multiply by 325,851, to convert to gallons per day, divide this figure by 365).



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⁶ Fugro West, Inc., 1995. *North Monterey County Hydrogeologic Study, Vol. 1: Water Resources*; Table 11. Prepared for Monterey County Water Resources Agency, October 1995.

Monterey County Water Resources Agency and EDAW, Inc., 2002. North Monterey County Comprehensive Water Resources Management Plan; January 2002. Table 1. "Summary of Overdraft Problem."

will actually be removed (correspondence from Ed Mercurio, biological consultant, to applicant dated April 25, 2002, submitted by applicant's representative, December 1, 2003; see Exhibit I). The County's LCP requires that oak tree removal be prohibited on slopes greater than 25%, and that development on slopes less than 25% be sited and designed to minimize disruption of vegetation and habitat loss.

Finally, the project is also located within Subwatershed No. 29, of the Elkhorn Slough Watershed. Historically, soil erosion within the Elkhorn Slough watershed has led to reduced water quality and adverse impacts to habitat. Soils in the area have moderate to high erosion hazard, and large portions of the existing parcel are located on slopes greater than 25%. While most of the building envelopes and septic systems are located outside of these steep areas, portions of the building envelopes are located within slopes greater than 25%. The subdivision and future development of five new homes, and access roads to reach these homes have the potential to increase the erosion potential.

B. Analysis of Appeal Issues

Subdivision is Inconsistent with Current Zoning.

A. Appellant's Contentions

The appellants contend in part that: "Because the County cannot remove the "B-7" overlay from this lot without an LCP amendment, the proposed subdivision is inconsistent with the current zoning", and that the project on appeal is inconsistent with the Certified LCP for the following reasons (See Exhibit F for complete text of appellants' contentions):

- The B-7 overlay does not allow any land division.
- Allowable density of any proposed subdivision must be based on an evaluation of site conditions and cumulative impacts.
- Removal of the "B-7" overlay, rezoning to LDR without the overlay requires an LCP amendment from the Coastal Commission.

B. Local Coastal Program Provisions

The appellants cite the following North County Land Use Plan (LUP) and Coastal Implementation Plan (CIP) policies:

- CIP Section 20.42.030.G.1 (Relevant Portion of B-7 Overlay Restriction) The lots as shown on the recorded Final Map or Parcel Map may not be further subdivided unless the lots are first reclassified from the "B-7" district. Lot line adjustments may be allowed...
- CIP Section 20.144.140.B.3.d.1 Densities of residential subdivisions shall be based upon an evaluation of the site conditions and the development's cumulative impacts. As such, the maximum allowable density based on the evaluation shall be determined pursuant to Section 20.140.070. Factors to be considered include: geologic/flood/fire hazards, slope, vegetation,



environmentally sensitive habitats, water quality and availability, erosion, septic tank suitability, adjacent land use compatibility, public services availability, and coastal access and visual resource opportunities and constraints. (Ref. Policy 4.3.6.D.1)

The following policies are also relevant:

- CIP Section 20.42.030.G.3 Reclassification from "B-7" zoning to allow further subdivision may be considered when the applicant demonstrates to the satisfaction of the Board of Supervisors that he has met minimum requirements in respect to water supply, drainage, sewage disposal, parcel size and design, and traffic circulation for the total area included in the "B-7" district, created as a result of the subdivision of which the lot is a part. Upon application for a land division, the applicant shall provide appropriate copies illustrating the aforementioned information. [emphasis added]
- CIP Section 20.94.042 Zoning Changes and Amendments Not Subject to California Coastal Commission Certification: Zoning designation reclassifications constituting an amendment to this Title and initiated for the purpose of preserving or enhancing the coastal resources including adding any "B", "A", "HR", "Z" overlay zoning designations shall not require certification by the California Coastal Commission. [emphasis added]
- CIP Part 6, Appendix 13 Local Coastal Amendment Procedures: V; The sum of the chosen zoning map densities represents a buildout level which corresponds to the maximum permitted density for North County. Thus, as part of any amendment request to the Coastal Commission to increase the density in North Monterey County, the County shall indicate at what percentage toward buildout North County is, and how the amendment will add to potential development compared to the remaining permitted number of units

C. Local Government Action

Finding number 1 of the County's action (Resolution 02-252, Exhibit E) approving the project, addresses zoning and density suitability, with the conclusionary statement (Exhibit E, Page 2) that:

The parcel is zoned "LDR/B-7(CZ)"... and as conditioned, conforms to the plans, policies, requirements and standards of the North County Land Use Plan and the development standards and zoning regulations contained in the certified Coastal Implementation Plan, specifically Chapter 20.144 – "Regulations for Development in the North County Land Use Plan Area" and the development standards contained within Chapter 20.14 ("LDR" District) and 20.42 ("B" Districts) in the Monterey County Zoning Ordinance (Title 20).

Evidence listed in support of this finding states that there is no indication from the Planning and Building Inspection Department, Water Resources Agency, Public Works Department, Environmental Health Department and the North County Fire Protection District that the site is not suitable for the proposed development. Additional evidence goes on to state that

...the site is physically suitable for the proposed density of the development,...the proposed project will result in a gross density of 2.83 acres per unit... [and that]...the applicant has



demonstrated adequate water supply, drainage, sewage disposal, parcel size and design, and traffic circulation.

The project was conditioned, among other things, to provide the Water Resources Agency with a water balance analysis describing the pre-development and post-development water use on the property (Condition 17), to submit a drainage report (Condition 35), and to obtain an amended water system permit from the Division of Environmental Health (Condition 51). However, there was no explanation or analysis in the findings as to why the proposed water use, density or the rezoning was consistent with the applicable policies and ordinances.

D. Substantial Issue Analysis and Conclusion

1) History of the Property

The Gorman property (APN 129-096-029) was originally a 25.53-acre parcel. In 1980 (prior to completion and certification of the County's LCP⁹), the property owner, and current applicant, received approval from Monterey County for a four-lot subdivision of the parcel. The applicant then approached the Coastal Commission for a CDP to allow the four-lot subdivision. The Coastal Commission, which was generally not approving land divisions in the Moro Cojo watershed, denied approval of the four-lot subdivision, due to concerns about cumulative impacts prior to completion of the LCP, and cumulative impacts of groundwater overdraft.

However, the Coastal Commission did approve a land division for two parcels (8.5 acres and 17.03 acres, respectively), since each already contained an existing house. The Coastal Commission permit (P-80-272) authorizing the two-lot subdivision, conditioned the permit to require a deed restriction to prevent further division of the parcels, unless otherwise allowed in the yet to be completed LCP. (The deed restriction was subsequently recorded on December 15, 1980¹⁰). After the Coastal Commission approved the two-lot subdivision in 1980, the B-7 overlay was placed on the zoning designation for each of the new parcels as part of the LCP, which was certified in 1987.

In 1992, after transfer of permit authority to Monterey County, the County considered an application to subdivide the 8.5-acre lot into three lots. Because of the B-7 overlay requirements, the applicant, pursuant to the LCP, approached the Board of Supervisors for an LCP amendment. After review of the impacts on water supply, sewage disposal and traffic impacts, the Board was satisfied that the criteria of CIP Section 20.42.030.G.3 demonstrating that minimum requirements with regard to these resources had been met, and approved the three-lot subdivision.¹¹ As one of the conditions of approval, the applicant was assessed a water-impact fee to help fund a study concerning the question of continuing groundwater overdraft¹². The County then submitted the amendment to the Coastal Commission for

¹¹ Monterey County local permit #PC-7785, adopted by Board of Supervisors May 12, 1992 (Resolution No. 92-224)

¹² Interestingly, the current project as approved by the County also includes a condition of approval requiring the applicant to pay a fee for the same "area-wide hydrological study to address groundwater overdraft and water resources in the project area" (See Exhibit E,



⁹ Monterey County's LCP was not certified until December 1987, with coastal permit authority transferring to the County in February 1988

¹⁰ Deed Restriction #G 47839, recorded December 15, 1980

certification as Item #2 of Monterey County LCP Amendment No. 1-92.

After review of Part 2 of LCP Amendment No. 1-92, Commission staff recommended denial of this portion of the amendment, noting that Policy 2.3.2.3 of the North County LUP required that

New development shall be phased so that the existing water supplies are not committed beyond their safe long-term yields. Development levels that generate water demand exceeding safe yield of local aquifers shall only be allowed once additional water supplies are secured.

The staff recommendation for denial also stated at that time that:

...evidence in the record of a continuing groundwater overdraft is compelling to find against approving additional density. Under current Land Use Plan policies and overdraft conditions, it is problematic whether all potentially allowable development will ever occur. Thus allowing even more density is premature. Approval of this proposal would set a precedent for similarly zoned land resulting in increased adverse cumulative impacts.

However, prior to the Amendment going to hearing before the Coastal Commission in October 1992, at the request of Monterey County, the hearing on the amendment was postponed and continued to allow the County to conduct additional analysis to show conformance with the certified LUP. Monterey County LCP Amendment No. 1-92 #2 was never brought back to the Commission but was subsequently refiled as part of a new LCP amendment submitted in 1993 (LCP Amendment No. 1-93 #5) for removal of the "B-7" overlay to allow a three-lot subdivision of the 8.5-acre parcel. Amendment 1-93 #5 was subsequently approved by the Coastal Commission on June 9, 1993. Approval was based on the additional analysis of density and cumulative impacts to the water supply done by the County and, as a result, the three-lot subdivision of the approximately 8.5-acre parcel was approved.

The LCP Amendment 1-93 #5 staff report also noted that during this same time period (early-mid 1993) the County had prepared revised language regarding the 50% buildout figure, that was intended as an LCP amendment to update the North County Area LUP.¹³ The revised LUP policies would have applied the resource and infrastructure constraint policies on a sub-basin/sub-watershed basis rather than to the entire planning area segment, on an interim basis until the North County Hydrologic Studies were completed and a groundwater management plan had been developed.¹⁴ However, this LCP amendment was never completed or submitted to the Coastal Commission for certification.

2) The Subdivision is Inconsistent with Current Zoning

Subdivision of this parcel is inconsistent with the current LDR-B-7(CZ) zoning that prohibits new subdivisions in areas with environmental and public facility constraints, such as lack of water, drainage,

 $^{^{14}\} California\ Coastal\ Commission\ approved\ staff\ findings\ from\ Monterey\ County\ LCP\ Amendment\ No.\ 1-93\ \#5.$



Condition 12, Page 14). The study, North Monterey County Comprehensive Water Resources Management Plan, prepared by Fugro West, Inc. was completed in 1995.

CIP Section 20.144.140.B.3.a establishes a 50% buildout figure in an effort to limit groundwater use to the safe yield level. The current 50% figure (1,351 new lots or units) represents development at a level of 50% of the build-out remaining at the time of LUP certification. Note: the original 50% buildout figure was 2,043 new lots or units at time of LUP certification in June 1982 but had been revised to 1,351 new lots or units, when the CIP was certified in July 1987.

and sewage disposal. This parcel is subject to the "B-7" overlay because it is located in an area where groundwater is severely overdrafted, ¹⁵ where erosion hazards are moderate to high due to steep slopes and erosive soils, and is located in a rural area where public wastewater discharge facilities are not available.

The LDR-B-7 zoning classification, pursuant to CIP Section 20.42.030.G1, does not allow subdivision unless lots are first reclassified from the LDR-B-7 district. The LDR-B-6 zoning classification, pursuant to CIP Section 20.42.0030.F.1, prohibits further subdivisions under any circumstance. Since neither of these zoning designations allow subdivision, it must be assumed that the rezoning process actually had to occur in two steps: rezoning from LDR-B-7 to some zoning designation that would allow for subdivision (eg., LDR or RDR), then rezoning from LDR or RDR to LDR-B-6. However, while the **addition** of a zoning overlay, initiated for the purpose of preserving or enhancing coastal resources, does not require approval by the Coastal Commission, pursuant to CIP Section 20.94.042, **removal of the B-7 zoning overlay constitutes an amendment to the LCP**, and as such, requires submittal of an LCP amendment for review and approval by the California Coastal Commission, pursuant to CIP Section 20.94.030.D.6 and Coastal Act Section 30514. The County had been aware of this requirement, as evidenced by the submittal of LCP Amendments No. 1-92 #2 and No. 1-93 #5 to the Commission in the past.

Furthermore, to be considered for reclassification from LDR-B-7 to a zoning district that allows subdivision, applicants must demonstrate through the LCP amendment review process that they have met minimum requirements with respect to, among other things, water supply, drainage, and parcel size and design. No LCP amendment to remove the "B-7" overlay on this 17.03 acre site has been submitted to the Coastal Commission, nor has any thorough analysis of the substantive issues listed above been completed. Thus the project is inconsistent with the County's LCP.

Additionally, the allowable density of the subdivision must be considered and must be based on an evaluation of the site conditions and cumulative impacts as required by CIP Section 20.144.140.B.3.d.1. This Section of the CIP requires densities of residential subdivisions to be based on "an evaluation of the site conditions and the development's cumulative impacts." The Section lists factors to be considered, including water availability and quality, vegetation and environmentally sensitive habitats, and slope and erosion among others. This project is inconsistent with CIP Section 20.144.140.B.3.d.1 because the County has not yet developed a groundwater management plan to deal with the issues involved in continued groundwater overdraft that is still occurring in this portion of the North County Planning area, thus any additional withdrawals would be premature.

Therefore, the Commission finds that rezoning to allow subdivision of the project site into 6 lots, with potential additional future development on the five new lots, is inconsistent with the Monterey County LCP, specifically with regards to zoning ordinances 20.42.030.G.1 and 20.42.030.G.3. The Commission finds that a substantial issue is raised with respect to allowing development inconsistent

The project site is located in the Highlands South sub-area of the North County Hydrogeological Study Area, where groundwater overdraft has been documented to be 630 acre feet per year (i.e., historical groundwater pumping of 5,020 af/yr exceeds what was then established as sustainable yield of 4,390 af/yr by 630 af/yr). See Exhibit P, Table 11.



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with current zoning requirements.

3) Removal of the B-7 Overlay Requires an LCP Amendment

The LCP provides for limited revisions to the "B" overlays, including the addition of such an overlay without certification by the Coastal Commission. CIP Section 20.94.042 allows **addition** of a "B" overlay specifically for the **purpose of preserving or enhancing coastal resources** without certification by the Coastal Commission. This section was designed to make it easier for the County to protect coastal resources through the imposition of more restrictive zoning in order to prevent the premature or inappropriate subdivision of certain lots. Because the intent of the zoning change, as specified in this Section, is "**preserving or enhancing**" coastal resources, certification of the change by the Coastal Commission is not required in such an instance.

However, this project required **removal** of an existing "B-7" overlay in order to subdivide the parcel. Once the "B-7" overlay was removed, subdivision of the parcel could occur. The County then applied a different "B-6" overlay onto the newly created parcels to prevent further subdivision. While this process may have been used to temporarily lift the "B" overlay to facilitate the subdivision, it entirely circumvents CIP Section 20.94.042, which requires that the applicant first demonstrate that adequate water supply, drainage, sewage disposal requirements are met. Although the placement of the "B-6" overlay on the newly subdivided lots may be seen as an action that is protective of the resources (open land and environmentally sensitive habitat in this instance), it does not in fact protect resources as the property could likely not be further divided in any event.

The project is thus inconsistent with County Zoning Ordinance Section 20.94.042 because it impermissibly removes the "B-7" overlay to allow for subdivision without first obtaining the required LCP amendment. Therefore, the County's action raises a substantial issue with respect to the County Zoning Ordinances, CIP Chapter 20.94.042, based on the following: 1) the project is not consistent with current zoning; 2) changing the zoning requires an LCP amendment, as demonstrated by the history of an LCP amendment being obtained prior to approval of subdivision of the adjoining parcel with identical zoning.

Furthermore, the Coastal Commission analysis that allowed for the approval of the 1992 subdivision of the applicant's adjoining 8.5-acre parcel can not be offered in this case because the proposed LCP amendment intended to modify water policies, upon which the earlier approval was based, was never ultimately submitted or certified by the Coastal Commission. Thus the earlier approval relied on a prospective LCP amendment that never materialized.

Since that time, however, The North County Hydrology Study was completed in 1995, and in the subsequent years our understanding of the dire groundwater situation in the region has increased. It appears that the overdraft has become even more severe than it was at the time the original regional study was completed. As a step to solving the groundwater overdraft problem, a Comprehensive Water Resources Management Plan is being developed, that includes various means to reduce groundwater withdrawals, including increased water conservation measures, increased groundwater recharge, and increased importation of water (i.e., outside sources of water that can be piped in to



provide supplemental water to agricultural users).

2. Water Supply

A. Appellants' Contentions

The appellants contend that if for some reason a subdivision were potentially appropriate for this parcel, the project on appeal would be inconsistent with the County's certified LCP for the following substantive reasons:

- This project lacks proof of an adequate long-term water supply.
- This project involves non-priority development in an area of limited water.

B. Local Coastal Program Provisions

The appellants specifically reference the following Land Use Plan (LUP) and Coastal Implementation Plan (CIP) policies regarding water supply (See Exhibit F for complete text of appellants' contentions):

- Policy 4.3.5 General Policies 4. Where there is limited land, water, or public facilities to support development, coastal-dependent agriculture, recreation, commercial and industrial uses shall have priority over residential and other non-coastal-dependent uses. [emphasis added]
- CIP Section 20.144.140.B.3.a Build-Out. In the North County Land Use Plan area, a total of 2,043 new lots or units may be created after certification of the LUP in June, 1982. This figure represents development at a level of 50% of the build-out remaining at the time of LUP certification. It was calculated by subtracting the number of existing units from the potential build-out (i.e. 7,835 units 3,750 units = 4,085 units; 4,085 units X 50% = 2,043 units), at the time of LUP certification as provided in LUP Policy 4.3.3. The 50% build-out is permitted as the first phase of new development which limits groundwater use to the safe yield level. Additional development beyond this first phase shall require a Local Coastal Program amendment, pursuant to Appendix 13 of this ordinance, and shall only be permitted after safe yields of groundwater use have been established and water supplies are determined to be available, according to definitive water studies. [emphasis added]

Between the time of LUP certification (June, 1982) and Coastal Implementation Plan preparation (July, 1987), a total of 168 lots were approved and a total of 119 final building permits were issued. As well, there were a total of 405 vacant residential parcels as of July, 1987. (These figures were calculated through use of County Planning Department and Assessor computer records.) Subtracting these figures from the 2,043 new lots or units provides the remaining build-out that may be permitted after County assumption of coastal development permitting authority, exclusive of one single family dwelling on a vacant lot of record. That remaining build-out figure is 1,351 new lots or units. This figure shall include senior citizen units, caretaker units, multiple family dwellings, employee housing, and lots created through



subdivision approved after County assumption of permitting authority, but shall exclude development of a single-family dwelling on a vacant lot of record. (Ref. Policy 2.5.3.A.2 & 4.3.3) [emphasis added]

• CIP Section 20.144.070.D.1 A hydrologic report shall be required for any development which involves intensification of water use... Uses where the water will be used for agricultural operations shall not be exempted from the hydrologic report....D.5. The hydrologic report shall contain, at a minimum, the following elements...D.5.d. assessment of existing and proposed water usage, including water usage for landscaped and other vegetated areas; ...D.5.h. assessment of the individual and cumulative impacts of the proposed development on the quantity and quality of the groundwater table and local aquifer...;D.5.i. Assessment of the proposed development's individual and cumulative impact on the aquifer's safe long-term yield level, saltwater intrusion and long-term maintenance of local coastal-priority agricultural water supplies...

Other relevant policies include:

- 2.5.1 Key Policy The water quality of the North County groundwater aquifers shall be protected and new developments shall be controlled to a level that can be served by identifiable, available, and long-term water supplies. The estuaries and wetlands of North County shall be protected from excessive sedimentation resulting from land use and development practices in the watershed area. [emphasis added]
- **Policy 2.5.2.3** New development shall be phased so that the existing water supplies are not committed beyond their safe long-term yields. Development levels that generate water demand exceeding safe yield of local aquifers shall only be allowed once additional water supplies area secured.
- Policy 2.5.3.A.2 The County's long-term policy shall be to limit groundwater use to the safeyield level. The first phase of new development shall be limited to a level not exceeding 50% of the remaining build out as specified in the LUP. This maximum may be further reduced by the County if such reductions appear necessary based on new information or if required in order to protect agricultural water supplies. [emphasis added]

C. Local Government Action

The County's action (Resolution 02-252, Exhibit E), among other things, allows for the subdivision of a 17.03-acre parcel into 6 parcels ranging from 1.18 to 6.93 acres in size, the location of proposed building envelopes, and improvements to a water system to serve future residential development on five new lots.

Finding #8 (Exhibit E, Page 8) includes a conclusionary statement that the project is consistent with Section 20.144.070 of the Coastal Implementation Plan (which provides development standards to protect the water quality of North County surface water resources and groundwater aquifers, control new development to a level that can be served by identifiable, available and long-term water supplies and protect North county streams, estuaries and wetlands from excessive sedimentation resulting from



land use and development practices in the watershed areas). Evidence provided for this finding only states that the parcel is located within Subwatershed No. 29, a Watershed Restoration Area, and that the project has been conditioned to control site drainage and erosion resulting from future construction of single family dwellings on each lot. [While Subwatershed No. 29 is a sub-basin of the Elkhorn Slough watershed (as shown on Exhibit O) it is actually not shown in the North County LUP Table 1 as exceeding the critical erosion threshold, so is not actually considered to be a watershed restoration area. However, as soils on the site are considered to have moderate to high erosion potential, conditioning the project to control site drainage and erosion is appropriate if any development were to occur here.]

Finding #6 (Exhibit E, Page 8) addresses the issue of density, by a conclusionary statement that the project is consistent with CIP Section 20.144.140.B.3.a (which requires phasing development to a maximum of 50% of total buildout in order to limit groundwater use to the safe yield level). The only evidence for this finding states that the project represents lots 825-829 out of a 50% build-out maximum of 1,351 new lots or units allowed to be approved in the North County land use planning area since July 1987. There is no discussion regarding the adequacy of water supplies or the discretion of the County to approve fewer or no lots relative to the 50% buildout as implied by LUP Policy 2.5.3.A.2, above.

Additionally, Finding #9 (Exhibit E, Page 9) reiterates the fact that North Monterey County aquifers have a serious overdraft and saltwater intrusion problem. Evidence to support this finding states that Chapter 18.51 establishes a Water Impact Fee for development in the North County area to assist in financing a study of the safe yield of the North County aquifers, and the project has been conditioned to pay "the appropriate financial contribution" to implement the area-wide study. However, the County action does not recognize that the North County Hydrologic Study was conducted and completed in 1995, and that a Comprehensive Water Management Plan is currently being prepared. Furthermore, there is no analysis or explanation of how the payment of a fee mitigates the physical impacts on coastal resources of increasing the overdraft of the aquifer.

In addition to findings and evidence, the project was conditioned, among other things, to provide the Water Resources Agency a "water balance analysis describing the pre-development and post-development water use on the property," to submit a drainage report and to obtain an amended water system permit from the Division of Environmental Health. The submission of a water balance analysis, required to describe pre-development and post-development water use on the property, likewise does not mitigate the increased water use but will simply describe how much additional water will be used.

D. Substantial Issue Analysis and Conclusion

1) Status of Water in North Monterey County

The overdraft of and saltwater intrusion into aquifers in the North County planning area is of great concern. Groundwater is the main source of all agricultural irrigation and potable water used in North Monterey County. Most of the groundwater used in the North County is for agricultural irrigation, with



6,150 acres of prime farmland.¹⁶ Groundwater overdraft occurs when more water is removed from the aquifer than is recharged, through infiltration of rainfall and surface water runoff. This results in a general lowering of the groundwater table, which can effect reduce the amount of base flow that discharges to rivers and creeks, thereby reducing flow velocities with in turn can increase sediment deposition and reduce the physical extent and quality of riparian and aquatic habitats. Additionally, the water quality of the aquifer itself can be reduced due to saltwater intrusion, which occurs as saltwater infiltrates the aquifer forming a wedge of briney water between sea level and the top of the groundwater table. Briney water cannot be used for irrigation because the accumulation of salts in the root zone is toxic to plants. Thus saltwater intrusion can result in the need to abandon wells once they become briney, and drilling of deeper wells that can extend into deeper aquifers. Thus overdrafting of groundwater can put the long-term water supply for all people that rely on these overdrafted aquifers at risk.

Prior to the certification of the North County Planning Area Land Use Plan, in June of 1982, groundwater overdraft in the area was well documented. In 1977, the State Department of Water Resources indicated that a general groundwater overdraft of about 15,500 acre-feet annually existed in the entire North County area. The primary aquifer unit underlying the project site and vicinity is the Aromas Sand aquifer, the major aquifer in the coastal zone. (The Highlands South area is a sub-basin of this hydrologic unit). In 1980 the U.S. Geological Survey confirmed the overdraft of the Aromas Sand Aquifer and estimated an overdraft in the study area of about 1,500 to 8,000 acre-feet.

It was evident at the time the North County LUP was being written that continued overdraft in the North County area would lead to increasing saltwater intrusion of the aquifers and lower water tables as well, potentially leading to water shortages. At that time, it was understood that managing the demand for water within the limits of a long-term water supply would be a major challenge for the area, and that additional information was needed to determine the long-term safe yield of the North County aquifers.

Overdraft was clearly recognized as a problem in the LUP when it was completed in 1982. The LUP describes as evident the increasing saltwater intrusion and lowering of water tables resulting from the continued overdraft in the North County area, and both the LUP and Title 20.144 "Regulations for Development in the North County Planning Area" contain policies designed to protect water supply and water quality in this planning area, with specific policies to control density of development in order to maintain a sustainable groundwater supply. Provisions were included to reduce buildout if that seemed necessary once safe yields could be determined by further study. The County, in an effort to determine the water supply and quality issues of the area, contracted for the *North Monterey County Hydrogeologic Study, Volume I: Water Resources*, which was completed in October 1995, and *Volume II: Critical Issues Report and Interim Management Plan*, which was completed in May of 1996¹⁷. An

Fugro West, Inc., 1995. North Monterey County Hydrogeologic Study, Volume.I: Water Resources, prepared for Monterey County Water Resources Agency, October 1995. And: North Monterey County Hydrogeologic Study, Volume II: Critical Issues Report and Interim Management Plan, prepared for Monterey County Water Resources Agency and North County Inter-Agency Committee, Final Report dated May, 1996.



Prime farmland acreage value as of 2000, based on Farmland Mapping and Monitoring Program data from State of California Department of Conservation, Divisions of Land Resource Protection.

extensive portion of the North County planning area, including the proposed project is contained in the study area (See Exhibit H). The Volume I: *Water Resources* report defined the water supply and water quality issues, while the Volume II: *Critical Issues Report and Interim Management Plan*, identified the key issues as well as potential interim solutions that could be implemented to start addressing the problems.

Subsequent to the recommendations in Volume II of the Hydrogeologic Study, the County drafted a Water Action Plan for the Hydrogeologic Study Area in 1997 to address the groundwater overdraft and related land disturbance problems in the area (See Exhibit H). The Action Plan included measures to amend Title 16, the Grading and Erosion Control Ordinances; Title 19, the Subdivision Ordinance; Title 20, the Zoning Ordinance, and Title 15 (Public Services), as well as adoption of a Fallow Land Banking Program to remove certain existing agricultural lands from production.

In January 2002, the Monterey County Water Resources Agency (MCWRA) released the *North Monterey County Comprehensive Water Resources Management Plan* (CWRMP) to address water supply and quality issues in North Monterey County. The CWRMP recommends following the Pajaro Valley Water Management Agency's Basin Management Plan (BMP) to address water supply and water quality issues in the Pajaro, Springfield Terrace and Highlands North regions, and provides several alternatives for the Highlands South and Granite Ridge areas. The CWRMP reported current overdraft in the entire watershed of 16,742 acre-feet per year (AF/y) in 2002¹⁸ and 1,705 acre-feet per year in the Highlands South sub-basin (see Exhibit P, Table 1), in which the subject parcel is located (up from 630 af/yr overdraft calculated in the 1995 *North Monterey County Hydrogeologic Study; see Exhibit P, Table 11*). With calculations of overdraft having increased substantially from 1977 to 2002, and future overdraft predicted to increase to 36,526 af/yr for the entire study area, and 4,411 af/yr for the Highlands South sub-basin based on modeling of potential future buildout, allowable buildout could be further restricted to less than 50% based on LUP policy 2.5.3.A.2, which allows the County to limit groundwater use to the safe yield level, and to further reduce buildout "...if such reductions appear necessary based on new information or if required to protect agricultural water supplies."

Because the current demand within the North County Hydrogeologic Study Area (31,152 AF/y in 2002) is already more than twice the safe-yield figure (14,410 AF/y) for the entire study area, and current demand within the Highlands south sub-basin (6,095 af/yr in 2002) is nearly 140% of the sustainable yield (of 4,390 af/yr) for the sub-basin, ¹⁹ any added demand is undesirable since it could further lower the water table, and put at risk the long-term water supply upon which hundreds of people currently rely. The North County Hydrogeologic Study notes that while water supply accessibility in the Highlands sub basins (both North and South) is generally good, with good well yields and high storage, overdraft of the aquifer is being supported by storage depletion, and current demand and future development will

North Monterey County Comprehensive Water Resources Management Plan; Table 1, January 2002. Table 1 notes indicate that the previously defined Highlands South current demand estimate of 6,497 af/yr was reduced by 402 af/yr to 6,095 af/yr (because 201 acres overlap with the Castroville Seawater Intrusion Project (CSIP) area, and therefore, lower the baseline demand by an assumed 2 acre feet per acre).



¹⁸ 2002 (Demand of 31,152 AF/y minus Sustained Yield of 14,410 AF/y = Overdraft of 16,742 AF/y). *North Monterey County Comprehensive Water Resources Management Plan*; January 2002.

continue to mine the resource. Ultimately, continued groundwater overdraft could eventually lower the groundwater table to a level from which it might not recover. In addition, nitrate contamination of groundwater in North County including potential future nitrate loading (from failed septic systems) is a critical concern affecting the North County water supply. The CWRMP states that nitrate loading from rural wastewater sources is a function of the density of development. The CWRMP further states that the Highlands South aquifer is an unconfined aquifer, meaning that contaminants at the land surface may migrate to the water table, where they can travel to shallower residential wells.

Implementation of the LCP over recent decades has reflected increasing awareness of the serious nature of water supply and water quality issues in North Monterey County. Permits issued by the County from 1988 to the present have reflected a progressive shift toward stricter water supply control. In an attempt to reduce groundwater overdraft resulting from new development, the County finally imposed an 18-month urgency ordinance (Ordinance No. 4083) prohibiting new subdivisions and conversion of non-irrigated land to irrigated land in North County effective on August 9, 2000. This ordinance received a 6-month extension (Ordinance No. 4134) on January 22, 2002. However, since temporary ordinances are limited to 2 years, the ordinance expired on August 9, 2002.

2) Substantial Issue Analysis

It is well documented that the cumulative impacts of development have caused an overdraft of the region's aquifers, threatening future water supplies through saltwater intrusion and a lowering of the water table elevation. Given the fact that groundwater overdraft is already more than twice the safe yield, the sustainability of long-term water supplies for new development is highly unlikely. LUP Key Policy 2.5.1 requires new developments be limited to a level that can be served by identifiable, available, and long-term water supplies. The subdivision ordinance 19.03.015.M also requires that "the applicant shall also provide proof of an assured, long-term water supply in terms of sustained yield and adequate quality for all lots which are proposed to be created through subdivision." Resolution 02-252 does recognize that North County area aquifers have "a serious overdraft," "seawater intrusion problems" and "nitrate pollution problems throughout the area," but contains no evidence or analysis of any potential long-term water supply for this project. To mitigate for this project's potential impacts to the area's already seriously overdrafted aquifers, the Countys action requires the applicant to pay a fee to finance a study (which was already completed in 1996) and "management plans relating to the safe yield of the North Monterey County aguifers," which are somewhat ongoing. However, this mitigation is completely inadequate because the collection of a fee does not address the impact of this project, which will add increased water demand from 5 new dwelling units on a water supply already documented as being in serious overdraft. There is no evidence in the Resolution 02-252 that this proposed development can be served by any "identifiable, available, and long term water supplies." Additionally, CIP Section 20.144.070.D.1 requires a hydrology report for any development that involves intensification of water use. However, no hydrology report was provided or evaluated as part of the County's review. Therefore the County's approval of the subdivision is inconsistent with LUP Key

North Monterey County Comprehensive Water Resources Management Plan; Ch. 2, Introduction, pg. 2-11(source Fugro West, Inc. 1995); January 2002



Policy 2.5.1 and CIP section 20.144.070.D.1 and so raises a substantial issue with regards to identifying an adequate, long-term water supply.

In response to the Commission's appeal of the project, the applicant submitted a hydrogeologic analysis conducted for the project by Geoconsultants, Inc, dated April 28, 2003.

The hydrogeologic analysis prepared in response to the Commission's appeal also refers to sea-level elevations shown in the North Monterey County Hydrogeologic Study (Fugro West, 1995) and claims that "groundwater levels in the immediate area of the site have apparently remained at the same level over slightly less than 20-year interval," and therefore concludes that "pumping of wells around the site has had little or no local impact on water levels and ground-water availability." However, Figure 14 of the North Monterey County Hydrogeologic Study show that sea-level contours have indeed changed over time in the vicinity of the site, and have moved up to a mile inland (See Exhibit N). Additionally, information on water levels provided in the North Monterey County Hydrogeologic Study state that:

Water levels in the Highlands sub-areas have consistently declined over the last 20 years. Of note are the development and growth of several pumping troughs in the area. Figure 12 [see Exhibit M] shows a significant pumping trough in the Prunedale area, which has developed (or for which data is now available) since 1979 with water levels exceeding 40 feet below mean sea level (MSL) in some places. Also apparent is the presence of a pronounced pumping trough in the Las Lomas area with water levels approaching –25 feet MSL. The trough at Las Lomas is the northern portion of a larger north-south trending pumping trough lying approximately 2-4 miles inland and parallel to the coast. The trough has deepened and moved landward since December 1979... Between the axis of the pumping troughs and the coast, groundwater movement is landward, allowing seawater to move into the aquifers through offshore exposures and to migrate inland.... The water level data for the Highlands sub-areas, taken collectively, suggest a regional dewatering of these sub-areas with water levels retreating toward the buried bedrock ridge [of the Granite Ridge sub-basin north and east of Prunedale].

The increased water demand estimate was based on the assumption that water usage for any area outside the building envelopes will be negligible due to use restrictions in the habitat conservation areas.²¹ However, based on the County's own figures for determining estimated water use, this project can be expected to result in 5 new homes each using from 0.43 to 0.75 acre-feet of water per year per residence, which equates to an increase of from 2.15 to 3.75 AF/y (or an average of approximately 3 AF/y) for the five new homes.²²

The hydrologic report basically suggests that the five new houses will essentially not use any water at all. The reasoning behind this assertion is that 1) given a conservative estimate of increased water demand would be 0.5 AF/y per residence for a total of 2.5 AF/y for the increased domestic water

Figures based on those used by Monterey County to estimate water use of single-family homes. The low end of the range represents single-family homes with no potential for a second unit (such as a granny unit) and the high end of the range represents single-family homes with the potential for a second unit on the lot.



 $^{^{21}\} Hydrogeologic\ Analysis\ for\ Tanglewood\ Estates,\ Geoconsultants,\ Inc.;\ April\ 2003$

demand from development on the five new lots, 2) 50% or 1.25 af/yr of water use would be produced from septic return flow, and 3) increased impervious surfaces would increase storm water runoff, which would result in an additional 1.27 AF/y of water available for recharge for a total of 2.52 af/yr.

The hydrological report suggests that rather than the County's estimate of from 0.43 to 0.75 af/yr (for an average of approximately 3 af/yr), a more conservative estimate of water use would be 0.5 AF/y per residence for a total increased demand of 2.5 AF/y from development on the five new lots The increased water demand estimate was based on the assumption that water usage for any area outside the building envelopes will be negligible due to use restrictions in the habitat conservation areas.²³

The hydrogeologic analysis indicates that return flow from the septic waste disposal of the five proposed lots could be used to mitigate for up to 50% of the water demand from the project, or approximately 1.25 af/yr. However, the hydrogeologic analysis fails to consider that the water quality of such return flow would include high biological loads that would require geologic time to be filtered and transported through the substrate before actually recharging the aquifer, thus the rate of high quality water recharge would not be equivalent to the rate of consumption.

The hydrogeologic analysis also erroneously suggests that the project would result in "an increase in the amount of storm runoff from the site generated from impervious surfaces of the residential development, providing a "net" increase in recharge." While it is correct that the rate of storm runoff will increase due to increased impermeable surfaces (represented by increased runoff coefficient), the project will not increase the annual precipitation, nor infiltration rates, thus without some kind of stormwater detention basin, much of this increased runoff, will indeed runoff the property and not actually infiltrate into the ground to recharge the aquifer. Thus the increase in impermeable surfaces will actually reduce the amount of recharge that currently occurs at the site. The hydrologic analysis does however recommend water conservation measures, the use of native plants into landscaping plans, and project improvements that would direct and capture as much runoff as possible into a storm-water retention/recharge facility to be located along the southern edge of lots 2, 3 and 4, along the proposed access road. However, even if storm-water retention improvements were constructed, infiltration rates would remain the same, so recharge would not actually increase as suggested. Since the hydrogeologic report was conducted and submitted after the County acted on this project, none of it's recommendations are part of the project approved by the County.

A study completed for North Monterey County in 1995²⁴ concluded that within the Highlands South hydrogeologic subarea, where this project is located, a sustainable yield of 4,390 AF/y is recommended to prevent overdraft conditions. The report notes historical pumping at 5,020 AF/y a difference of 630 AF/y above the recommended sustainable yield. The report states that a 13% reduction in withdrawal would be needed to prevent overdraft conditions. More recently, the 2002 CWRMP maintains the sustained yield figure for Highlands South at 4,390 AF/y, and indicates current water demand for this

²⁴ North County Hydrogeologic Study, Volume I: Water Resources, Fugro West, Inc., October 1995. Prepared for Monterey County Water Resources Agency.



²³ Hydrogeologic Analysis for Tanglewood Estates, Geoconsultants, Inc.; April 2003

subarea at 6,497 AF/y with an overdraft of 2,107AF/y²⁵ (with a consequent 32% reduction in withdrawal needed to prevent overdraft conditions). Thus any additional subdivision and future development will only serve to increase water demand, which will serve to further drive the groundwater surface down and move saltwater intrusion landward, risking the long-term sustainability of current water supplies for existing residents and Coastal Act priority uses.

On a cumulative basis, the proposed project will contribute to further overdraft of the Highlands south groundwater aquifer. Significant numbers of new dwellings have been approved in North Monterey County on vacant parcels since LCP certification. Approval of this subdivision would result in an increase in the number of lots on which future development of single-family dwellings could occur. As noted in Finding 6, the project represents lots 825 to 829 out of the maximum 50% buildout number of 1,351 new lots. When the earlier three-lot subdivision was approved in 1993, the County determined at that time that they had approved approximately 263 units, but even at that time it was acknowledged that groundwater overdraft was considered a serious problem. Since that time, an additional 562 units had been approved between 1993 and 2002, while severe groundwater overdraft has remained an issue throughout much of the North County Land Use Planning area. There are also numerous existing vacant legal lots of record upon which residential development is already allowed, and for which a water supply other than groundwater withdrawal does not exist. While the total maximum buildout number may well have to be reduced to protect groundwater supplies from further declines, LCP policies give priority to existing lots of record, and not new subdivisions.

At the time of LCP certification it was thought that the maximum 50% build-out limits of Policy 2.5.3.A.2 would result in sustainable levels of development and that a new water supply would be forthcoming. However, these have not occurred, and so the increased water demand from new residential development coupled with noted changes in agricultural production have exacerbated the situation. Given what is now known about the severity of the water problem, all intensifications must be of concern.

The Commission therefore finds that the project is inconsistent with CIP Section 20.144.070.D.1, because the hydrology report completed for this project fails to convince the Commission that an adequate, long-term water supply will be available to the new lots. The Commission also finds that subdivision of the property is inconsistent with LCP policies requiring identification of a long-term water supply to serve the development.

Finally, the project is also inconsistent with LUP Policy 4.3.5.4, which sets priorities for the types of development allowed in areas with limited land, water or public facilities. This policy gives priority for development in areas with limited water to "coastal-dependent agriculture, recreation, commercial and industrial uses," and states these uses "shall have priority over residential and other non-coastal-dependent uses," thus delegating residential subdivisions to the lowest development priority for the North County planning area. The fact remains that there does not appear to be any water for anything new including "priority" uses. If any water was available, it would not be allocated to new residences

²⁵ North County Comprehensive Water Resources Management Plan; Appendix A, Table A-12 Current Overdraft (AF/y); pg. A-10, January 2002



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but rather a priority use. Given the existing water shortage in this area of the County, the low priority for this type of development, and that the project as proposed and conditioned is inconsistent with these policies, and Commission finds that a substantial issue exists with respect to viable, long-term water supply.

3. Environmentally Sensitive Habitat Resources

A. Appellants' Contentions

The appellants also contend in part that the project on appeal is inconsistent with the Certified LCP ESHA policies for the following reasons:

- Residential development is not a resource-dependent use.
- Development adjacent to ESHA is not compatible with long-term maintenance of the resource.
- Subdivisions resulting in significant impacts to ESHA are prohibited.
- Clustering of development is required to prevent habitat impacts.
- New residential development must be sited to protect maritime chaparral.

(See Exhibit F for complete text of appellants' contentions).

B. Local Coastal Program Provisions

The appellants cite the following LCP policies regulating land use in ESHA:

- Policy 2.3.2.1 With the exception of resource dependent uses, all development, including vegetation removal, excavation, grading, filling, and the construction of roads and structures, shall be prohibited in the following environmentally sensitive habitat areas: riparian corridors, wetlands, dunes, sites of known rare and endangered species of plants and animals, rookeries, major roosting and haul-out sites, and other wildlife breeding or nursery areas identified as environmentally sensitive. Resource dependent uses, including nature education and research hunting, fishing and aquaculture, where allowed by the plan, shall be allowed within environmentally sensitive habitats only if such uses will not cause significant disruption of habitat values.
- **Policy 2.3.2.2** Land uses adjacent to locations of environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New land uses shall be considered compatible only where they incorporate all site planning and design features needed to prevent habitat impacts, upon habitat values and where they do not establish a precedent for continued land development which, on a cumulative basis, could degrade the resource.
- **Policy 2.3.2.3** New development adjacent to locations of environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New subdivisions shall be



- approved only where significant impacts to environmentally sensitive habitats from development of proposed parcels will not occur.
- Policy 2.3.2.4 To protect environmentally sensitive habitats and the high wildlife values associated with large areas of undisturbed habitat, the County shall maintain significant and, where possible, contiguous areas of undisturbed land for low intensity recreation, education, or resource conservation use. To this end, parcels of land totally within sensitive habitat areas shall not be further subdivided. On parcels adjacent to sensitive habitats, or containing sensitive habitats as part of their acreage, development shall be clustered to prevent habitat impacts.
- Policy 2.3.3.A.2 maritime chaparral is an uncommon, highly localized and variable plant community that has been reduced in North County by residential and agricultural development. Further conversion of maritime chaparral habitat to agricultural uses is highly discouraged. Where new residential development is proposed in chaparral areas, it shall be sited and designed to protect the maximum amount of maritime chaparral. All chaparral on land exceeding 25 percent slope should be left undisturbed to prevent potential erosion impacts as well as to protect the habitat itself.
- Policy 2.3.3.A.4 Oak woodland on land exceeding 25% slope should be left in its native state to protect this plant community and animal habitat from the impacts of development and erosion. Development within oak woodland on 25% slope or less shall be sited to minimize disruption of vegetation and habitat loss.

The LCP also contains the following relevant policies:

- **Key Policy 2.3.1** The environmentally sensitive habitats of North County are unique, limited, and fragile resources of statewide significance, important to the enrichment of present and future generations of county residents and visitors; accordingly, they shall be protected, maintained, and, where possible, enhanced and restored
- Policy 2.3.2.6 The County shall ensure the protection of environmentally sensitive habitats through deed restrictions or dedications of permanent conservation easements. Where land divisions or development are proposed in areas containing environmentally sensitive habitats, such restrictions or easements shall be established through the development review process. Where development has already occurred in areas supporting sensitive habitat, property owners should be encouraged to voluntarily establish conservation easements or deed restrictions.
- Policy 2.3.2.8 Where development is permitted in or adjacent to environmentally sensitive habitat areas (consistent with all other resource protection policies), the County, through the development review process, shall restrict the removal of indigenous vegetation and land disturbance (grading, excavation, paving, etc.) to the minimum amount necessary for structural improvements.
- CIP Section 20.144.140.B.3.d.1 Densities of residential subdivisions shall be based upon an evaluation of the site conditions and the development's cumulative impacts. As such, the maximum allowable density based on the evaluation shall be determined pursuant to Section



20.140.070. Factors to be considered include: geologic/flood/fire hazards, slope, vegetation, environmentally sensitive habitats, water quality and availability, erosion, septic tank suitability, adjacent land use compatibility, public services availability, and coastal access and visual resource opportunities and constraints. (Ref. Policy 4.3.6.D.1)

C. Local Government Action

Finding #3 (Exhibit E, Page 5) states that the project will have a potential for changes to habitat resources upon which wildlife depends, and that the project as mitigated, will cause an impact to plant life resources and loss of potential habitat, and thus conditioned the project applicant to pay the Environmental Document Fee, pursuant to Department of Fish and Game regulations. However, Finding #4 (See Exhibit E, Pages 6-7) states that the project is consistent with LUP policies designed to protect ESHA. Evidence for this finding states that biological reports prepared the project in May of 1996 and May 2001 by the biological consultant indicate that the site contains environmentally sensitive maritime chaparral habitat, but that as redesigned and mitigated, the project complies with all applicable LCP policies. The finding also notes that four plant species of special concern and two wildlife species of special concern, typically associated with the maritime chaparral habitat, exist on the site. The finding further states that all protected habitat shall be restricted as a scenic or conservation easement; that the project has been redesigned to reduce grading and vegetation removal and to cluster the building sites on the parcel; no invasive plants shall be planted on any lot and that the redesigned map minimizes potential impacts to maritime chaparral (See Exhibit D original map and Exhibit C revised map).

The County conditioned their approval to require submittal of a final map showing building envelope locations for the new lots that would assure that except for approved structures and appurtenant uses (roads, driveways and septic systems) development shall not be located within the maritime chaparral habitat and on slopes greater than 25% (condition 9), and that a scenic or conservation easement shall be granted to Monterey County for all environmentally sensitive habitat and slopes greater than 25% on the property "...outside existing roads, approved building envelopes, septic envelopes, utilities, water facilities, infrastructure, roads and future driveways leading to parcels 2 thru 6" (condition 10) The County's approval was also conditioned to protect retained trees located close to the construction site (condition 15), use protective fencing around construction areas and prohibit grading within a 3-foot setback of the sensitive maritime chaparral (condition 60). Condition 64 requires that care be taken to remove as few oak trees as possible, to avoid impacts to landmark oak trees, and to replace all oaks greater than 6" dbh on a 2:1 basis. Ongoing condition 52 prohibits "...grading, structures, roads (except for driveways or as approved in accordance with this permit or in the recorded subdivision map), animal grazing, vegetation removal (except in accordance with a County approved restoration plan), or other activities" outside of the building envelopes.

D. Substantial Issue Analysis and Conclusion

The biological survey report prepared for the Gorman subdivision (by Ed Mercurio, Biological Consultant, May 1996), describes the 17.03 acre property as consisting of a 2.6 acre strip having a small frontage along Paradise Road with several existing structures, which would remain under present ownership, and a 14.43 acre portion that would be subdivided into five parcels, each containing one



2,200 to 2,300 square foot single-family dwelling. In general, the parcel is irregularly shaped with its long axis running basically east-west. Most of the parcel is situated on south facing slopes, with the northeastern portion of the property extending up to the ridgeline and back down the north facing slope of the ridge (see Exhibit C and Exhibit J).

As described by the biological survey and as shown on the vegetation map of the property (see Exhibit K), most of the parcel to be subdivided is a largely undisturbed mosaic of natural plant habitats that include central maritime chaparral, coast live oak forest, coast live oak woodland, and central coast scrub. According to the biological survey, Coast live oak forest is found on north facing slopes, where it is forms a dense, continuous closed canopy forest. On south facing slopes, the coast live oak forest is often more patchy and composed of smaller oaks. Most of the Gorman property is located on a south-facing slope, and large oaks occur near the top of the ridge just below the zone of continuous maritime chaparral. The largest oaks on the Gorman parcel are found in the Coast live oak woodland plant community, which is located on the more level areas around the bottom of the drainage near the southern boundary of the parcel. Oaks in this plant community are more distantly spaced and interspersed among grassland. Scattered patches of central coastal scrub occupy sites on gently sloping areas between grasslands and more densely wooded communities. Small amounts of grassland occur on relatively level areas that have recently been disturbed, such as recently graded areas, roadsides, driveways and pastures, most of which are located on the 2.6-acre portion of the parcel. Portions of the site also include eucalyptus, Monterey pine and black locust trees.

Of special concern is the fact that more than half the Gorman property is covered by central maritime chaparral, which is the dominant plant community on the site on the southerly facing slopes above the 250-foot contour (which occur across all of the proposed new lots). Isolated patches are also mapped below the 250-foot contour (within lots 2,3 and 4) and on northerly facing slopes (of proposed lot 6). (See Vegetation Map for the site, in Exhibit K.)

According to the biological report:

Maritime chaparral...is a unique chaparral community containing plants grown close to the coast on well drained, sandy soils within the cool summer fog zone. Locally is it called central maritime chaparral and is found primarily in the Prunedale Hills area. There are only a few other isolated tracts of it in existence. These are also mainly located in Monterey County with one small tract in Santa Cruz County. A few other isolated tracts of somewhat similar maritime chaparral are located in San Luis Obispo and Santa Barbara Counties. Wherever they are found, they are uncommon and highly localized plant communities containing high proportions of endemic plants.

Central maritime chaparral type is frequently dominated by brittleleaf manzanita (*Arctostaphylos tomentosa*) plus one or more of four endemic manzanita taxa including: Pajaro manzanita (*Arctostaphylos pajaroensis*), Hooker's manzanita (*Arctostaphylos hookeri ssp. hookeri*), sandmat manzanita (*Arctostaphylos pumila*) and Monterey manzanita (*Arctostaphylos montereyensis*). At some

 $^{^{26}\} Griffin, J.\ R., \textit{Maritime chaparral and endemic shrubs of the Monterey Bay Region}, \ Madro\~no,\ 1978,\ pp\ 65-112.$



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locations, stand dominance is shared with chamise (*Adenostoma fasciculatum*). Other species that comprise this plant community include: black sage (*Salvia mellifera*), poison oak (*Toxicodendron diversilobum*), and coyote brush (*Baccharis pilularis*).

The biological report for the project site also indicates that four plant species of special concern have been found on the property, including Pajaro manzanita (Arctostaphylos pajaroensis), Monterey manzanita (Arctostaphylos hookeri ssp hookeri), Monterey ceanothus (Ceanothus cuneatus ssp rigidus) and small-leaved lomatium (Lomatium parvifolium). Both Pajaro manzanita and Monterey manzanita are on the list 1B of the California Native Plant Society's (CNPS) Inventory of Rare and Endangered Vascular Plants. List 1B species are rare, endangered or threatened in California, with most plants on the list endemic to California. Pajaro manzanita is endemic to the Prunedale Hills and is not found naturally growing anywhere else. Monterey manzanita is classified as endangered in a portion of its range, and is found only in the Monterey Bay area, mainly within Monterey County and a small amount in Santa Cruz County. Monterey ceanothus and small-leaved lomatium are on the list 4 of the CNPS Inventory of Rare and Endangered Vascular plants. List 4 includes plants that are uncommon, but less rare than those of list 1B. Monterey ceanothus is endangered in a portion of its range, which is found mainly in the Monterey Bay area of Monterey and Santa Cruz Counties, and south into San Luis Obispo County. Small-leaved lomatium is classified as endangered in a portion of its range which is found coastal areas of Monterey and San Luis Obispo Counties with a few rare occurrences in Santa Cruz County.

Additionally, while no state or federally listed rare or endangered animal species were found or are known to occur on the project site, several animal species of special concern might occur on the site, including the California tiger salamander (*Ambystoma tigrinum californiense*), the ornate shrew (*Sorex ornatus*), the Monterey dusky-footed woodrat (*Neotoma fuscipes riparia*), the pallid bat (*antrozous pallidus*), and the badger (*Taxidea taxus*). Nests of the Monterey dusky-footed woodrat were observed on the property, and it is also thought that badgers are present based on observations of characteristic excavations of gopher and ground squirrel burrows.

The North County LUP Policy 2.3 specifically includes maritime chaparral as ESHA, and Key Policy 2.3.1 states that environmentally sensitive habitats are unique, limited and fragile resources of statewide significance, which, accordingly, shall be protected, maintained, and where possible enhanced and restored. LUP Policy 2.3.2.1 only allows development in ESHA for resource dependent uses (such as nature education, research, hunting, fishing and aquaculture) that do not cause significant disruption to habitat values. LUP Policy 2.3.3.A.2 describes maritime chaparral as an uncommon plant community in North County that has been reduced by residential and agricultural development, discourages any further conversion of maritime chaparral habitat to agricultural use, and requires that new residential development in chaparral areas be sited and designed to protect the maximum amount of maritime chaparral. It also requires that all chaparral on land exceeding 25% slope be left undisturbed to prevent potential erosion impacts and to protect the habitat itself. LUP Policy 2.3.2.2 also indicates that land uses adjacent to environmentally sensitive habitat areas must be compatible with the long-term maintenance of the resources, and LUP Policy 2.3.2.3 states that new subdivisions shall be approved



only where significant impacts to environmentally sensitive habitats from development of proposed parcels will not occur.

The LUP Policy 2.3.3.A.4 requires that oak woodland on land exceeding 25% slope be left in its native state to protect the plant and animal habitats and prevent erosion. It also requires that development within oak woodland on slopes of 25% or less be sited to minimize disruption of vegetation and habitat loss. Regulations for Development in the North County Planning Area also include regulations specific to the removal of oaks and landmark trees. Section 20.144.050.C.1 prohibits the removal of landmark trees (eucalyptus or Monterey pine trees 36" diameter at breast height or greater, or any other type of tree which is 24" or more in diameter at breast height, or a tree which is visually significant, exemplary of its species, or significant as part of a wildlife habitat). Section 20.144.050.C.5 requires, among other things, that oak trees greater than 6" in diameter or more, when measured 2 feet above ground shall be replaced in kind at a one-to-one ratio; and Section 20.144.050.C.6 requires that development within oak woodland habitat minimize the amount of oak tree removal and states, among other things, that subdivision proposals shall be modified for structure, size, location, siting, design, bulk, grading, lot size, and proposed lot boundaries where such modification will result in reduced oak tree removal.

The original Tentative map submitted for the subdivision (dated May 13, 1996; see Exhibit D) showed the lots configured in such a way that lots 5, and 6 would be located north of lots 2,3 and 4, with two new roads to serve the new parcels. As drawn on the May 1996 map, most of lots 4,5, and 6, and the building and septic envelopes for lots 5 and 6 would be located within environmentally sensitive maritime chaparral habitat. A revised map (dated revised May 9, 2001; see Exhibit C), incorporated in the County's approval, and referenced in the supplemental biological report dated May 15, 2001, incorporated by reference into the County's approval, shows that the lots have been configured so that all lots were located sequentially from east to west. However, when compared to the original biological map (dated May 1996), included with the May 15, 2001 report, the revised tentative map still results in building and septic envelopes located within environmentally sensitive maritime chaparral habitat; which is inconsistent with LUP Policy 2.3.2.3. In fact, when compared to the original biological map, the configuration of Lot 6, as shown on the May 2001 revised subdivision map, results in a parcel where the only areas outside of environmentally sensitive maritime chaparral habitat are areas of oak woodland with slopes over 25%. Thus the May 2001 revised subdivision map would create a parcel with no buildable site that would be consistent with LCP policies 2.3.2.1, 2.3.2.3, and 2.3.3.A.4. Residential development is not considered a resource dependent use, and therefore is not an allowable use within environmentally sensitive habitat. Additionally, the proposed scenic easement shown on the May 9, 2001 tentative subdivision map does not cover all habitat and slopes greater than 25%, as required by North County LUP Policy 2.3.2.6. Furthermore, the biologists supplemental report (letter report dated May 15, 2001), incorporated by reference into the County's action, indicated that a total of 68 coast live oaks would be removed (which differs from the 28 coast live oaks identified in the County's description of the project), and that the project would require removal of four Pajaro manzanita plants, which the May 1996 biological report describes as plant species of special concern. Such actions are inconsistent with LUP Policy 2.3.3.A.4, 2.3.2.8 and Regulations Section 20.144.140.B.3.d.1 that require that projects minimize disruption and habitat loss of indigenous vegetation, ESHA and oak woodlands. Additionally, the layout of the lots (in a linear arrangement, divided along the long axis of the parcel) does not appear



to cluster the proposed development sites, as required to avoid impacts to ESHA, which could be accomplished by reducing the number of lots, the size of the building envelopes, or by moving building sites further along the southwestern portion of the parcel.

Finally, the County's action approving the project conditioned upon a future revised subdivision map does not assure that full protection of ESHA is possible with the proposed subdivision, and is thus inconsistent with the LCP's ESHA protection policies. And without identifying where the scenic easement will be located, the County's action does not ensure protection of all sensitive habitat areas and maritime chaparral on slopes greater than 25%. The County's approval of the project therefore raises a substantial issue with regard to ensuring protection of environmentally sensitive habitat.

The project is also inconsistent with policies for development adjacent to ESHA because the County's approval does not establish specific setbacks that would ensure that development of additional single-family dwellings would be compatible with and provide for the long-term protection and maintenance of the resource. While the County's action does take efforts to protect adjacent ESHA, by requiring use of drought tolerant plants and water efficient irrigation systems (Condition 19), preservation of natural plant communities (Condition 65), and fuel reduction plans developed in accordance with a wildlife biologist to best maintain or improve habitat values (Condition 66) within building envelopes, the permit is conditioned only to require a three-foot setback from protective fencing for grading activities that would occur within the building envelopes (Condition 60), which themselves are quite large, and in some cases extend into areas of maritime chaparral.

The original biology report prepared for the project describes the majority of the portion of the lot to be subdivided as being in a "largely undisturbed state with natural habitat in abundance." Subdivision of this habitat and subsequent development will fragment these habitats, and reduce the habitat value that large contiguous, undisturbed habitats provide. The County's approval of the project therefore raises a substantial issue with regard to ensuring the long-term maintenance of environmentally sensitive habitat adjacent to proposed development.

Finally, proposed mitigation measures are inadequate because, while they have attempted to site and size building and septic envelopes to minimize impact to maritime chaparral, they do not succeed at avoiding maritime chaparral habitat (especially within lots 3, 4 and 6). And while the mitigation measures provide for tree replacement of oaks proposed to be removed, alternatives to the proposed siting, and size of building and septic envelopes to minimize removal of oak trees have not been incorporated as required by LUP policies 2.3.3.A.4 and 2.3.2.8. Therefore the project raises a substantial issue because mitigation measures fail to adequately protect ESHA and oak woodland as required by the County's LCP.

In conclusion, since the project approved by the County for subdivision for the Gorman property currently shows building and septic envelopes for potential future development within ESHA, would thus allow non-resource dependent development within ESHA, would not ensure that development adjacent to environmentally sensitive maritime chaparral would adequately protect the long-term maintenance of ESHA, and would require removal of up to 61 Coast live oak trees, inconsistent with LCP policies requiring that development minimize disruption of vegetation and habitat loss within oak



woodlands, the Commission finds that the project raises a substantial issue because it is inconsistent with LCP policies requiring protection of ESHA and oak woodland.

4. High Erosion Hazard Areas

A. Appellants' Contentions

The appellants contend in part that the project on appeal is inconsistent with the Certified LCP policies designed to reduce hazards for the following reasons:

- Determination regarding critical erosion shall be made prior to considering an application complete.
- Subdivisions must submit a soils analysis sufficient to determine what areas of the property are Critical or Non-Critical Erosion Areas.
- The project cannot be determined to be in compliance with Policy 2.5.3.5.a.

B. Local Coastal Program Provisions

The appellants cite the following Land Use Plan and Coastal Implementation Plan policies:

- CIP Section 20.144.070.A.1 For all proposed development, a determination shall be made by the project planner as to which portions of the parcel are in Critical and Non-Critical Erosion Areas. The determination shall be made prior to the application being determined complete...
- CIP Section 20.144.070.A.3 If a project involves substantial development, such as a subdivision, or where the soil types or development location in relation to the soil types, cannot be accurately determined by the planner, the applicant shall be required to provide a soils analysis. The analysis shall be required and submitted prior to the application being determined complete. The analysis shall consist of a soils map prepared by a soils engineer which delineates the following information: contours, areas over 25% in slope, soil types, and soils with K-Factors exceeding 0.4. This information shall be used as the basis for the planner's determination of Critical and Non-Critical Erosion Areas.
- Policy 2.5.3.C.5.a Maximum permissible densities for the various areas of the plan are shown on the land use plan map and in Section 4.3.1 of the text and range from .10 acres per residence in the High Density Residential areas to 5 acres per residence in the Rural Residential areas. These densities are maximum that may be approved under ideal conditions where all resource considerations of the plan can be fully met. In order to minimize erosion and consequent sedimentation of Elkhorn and Moro Cojo Sloughs, reductions in maximum permissible densities shall be made as follows:
 - a. In areas designated for Rural and Low Density Residential development:
 - -Densities shall be reduced as necessary in order to site all development in Non-



Critical Erosion Areas and to maintain cumulative development within the LDT for the subwatershed.

-Existing parcels containing no land suitable for development within the Non-Critical Erosion classification shall be limited to a single residence or to the existing development on the parcel or if there is none, a single residence. Division of the parcel shall not be permitted that creates an additional vacant parcel(s) intended for development.

Other relevant policies include:

2.8.2.3. New land divisions which create commitment to new or intensified development shall be approved only where it can be demonstrated that development of each proposed parcel and construction of the proposed access roads will neither create nor significantly contribute to erosion, geologic instability, flooding, or fire hazard, nor require construction of protective devices which would substantially alter natural landforms.

C. Local Government Action

The County, in Finding #8, finds the project consistent with CIP Section 20.144.070 (Exhibit E, Page 8), which includes the water resources development standards. The evidence for this finding states that the parcel is located in Subwatershed No. 29, a Watershed Restoration Area, and further states that the project has been conditioned to control site drainage and erosion. This condition of approval is intended to control erosion resulting from construction of the subsequent single-family dwellings.

Finding #11(Exhibit E, Page 9) states that the request to develop on slopes greater than 25% is consistent with CIP Section 20.144.070.E.2.a because "no other alternative exists which would allow development to occur on slopes of less than 25%." Evidence for this finding points to a slope analysis map prepared by Goetz Land Surveyors showing all access points to the property from Paradise Rd. on slopes greater than 25%.

D. Substantial Issue Analysis and Conclusion

The Initial Study and Soils report describe the project area as having steep slopes covered with highly erodible soils, composed primarily of Aromas sands and colluvium. The combination of this soil type and the steep slopes creates a high erosion hazard potential in many areas of the North County planning area, particularly when vegetation is removed or disturbed. Coupled with the parcel's hazardous soil conditions, is the project's proximity to Elkhorn Slough, which, located roughly 2 miles from the project location, is one of the largest and most productive wetlands systems on the central coast. Because of the documented water shortage, and the threat of sedimentation to surface water quality, the LCP contains policies to direct development to Non-Critical Erosion Areas.

According to correspondence from the applicant's geotechnical consultant, dated November 20, 2003 (see Exhibit I), a slope map and information regarding possible critical erosion potential was not included in the geotechnical report submitted for the project. As such, it would not be possible for the County to make a determination that the project was consistent with LCP policies 20.144.070.A.1 or 20.144.070.A.3 regarding critical and non-critical erosion areas. Therefore, the County's approval



raises a significant issue with regard to minimizing erosion and allowable maximum density requirements in critical erosion areas.

C. Substantial Issue Analysis- Conclusion

In conclusion, the appeal raises a substantial issue in terms of compliance with the LCP, procedurally with respect to the current zoning and re-zoning without an LCP amendment, and substantively, with respect to water availability and environmentally sensitive habitat. The development approved by Monterey County, Board of Supervisors Resolution #02-252, does not conform to LCP policies designed to limit development to those areas able to support it, and policies to protect water availability and quality and protect environmentally sensitive resources as required by the Monterey County Certified Local Coastal Program.

D. De Novo Coastal Permit Findings

The applicant proposes to remove a protective "B-7" overlay from a 17.03-acre property to allow for the subdivision of the parcel into 6 parcels, grading an access road, water facilities (5 individual wells), development on slopes greater than 25%, and removal of 61 coast live oaks. After the subdivision and related development has taken place, the protective "B-7" overlay will be replaced with a more restrictive "B-6" overlay, which prohibits further subdivision of the property. As discussed in the Substantial Issue findings above, **directly incorporated into these** *de novo* **findings by reference**, this project is inconsistent with the Monterey County LCP and cannot be approved.

First, as the referenced findings show, the proposed project is inconsistent with the current zoning classification. The property is currently zoned Low Density Residential (LDR)-B-7(CZ) and the "B-7" overlay prohibits subdivisions. Properties able to demonstrate that they have met minimum requirements with respect to water supply, drainage, sewage disposal, parcel size and design, and traffic circulation for the parcel may be reclassified to the basic zoning district, in this case Low Density Residential, that does permit subdivision. Setting aside the issue of meeting the minimum requirements with respect to the above limiting factors, Section 20.94.042 limits zoning changes that the County can undertake without certification by the California Coastal Commission. The County's action of removing the "B-7" overlay from this property to facilitate a subdivision and subsequently placing a different "B" overlay on the property is clearly inconsistent with this Section, which limits such unilateral reclassifications to adding any "B" overlay zoning designation for the explicit purpose of preserving or enhancing coastal resources. As the removal of the "B-7" overlay is necessary to subdivide the property, and subdivisions in general are not considered to result in the preservation or enhancement of coastal resources, and the County findings offer no support to this requirement, this project is inconsistent with the LCP and should be denied.

Additionally, even if the requisite LCP amendment was certified to allow rezoning of this parcel, the allowable density of the subdivision must be in compliance with CIP Section 20.144.140.B.3.d.1, which requires density to be based on an evaluation of site conditions and cumulative impacts. As identified in



the above findings, the approval of a 6-lot subdivision is inconsistent with this requirement because the density exceeds available water supply, it will have adverse impacts on ESHA, and because it will likely contribute to degradation of water quality through development in Critical Erosion Areas.

Second, the above findings show that the project is located in an area of severe groundwater overdraft, saltwater intrusion, and pollution from nitrates. The hydrology report prepared for the project as required by CIP Section 20.144.070.D.1, to prove that the project has an adequate, sustainable long-term water supply assumes that the addition of 5 single-family residences will not use any additional water. Additionally, the project consists of a low priority land use for development in an area with a limited water supply, conflicting with Policy 4.3.5.4. Given that the project is a low priority for development and located in an area with an inadequate water supply, that the region has proven groundwater overdraft and potential shortages, and that the hydrology report completed for this project does not adequately address cumulative intensification of an already overdraft groundwater supply, the new residences are not ensured to have an adequate long-term water supply, this project is inconsistent with the LCP and must be denied.

Third, the above findings also show that the project area contains a substantial amount of maritime chaparral, considered to be ESHA by the LCP. The applicant proposes a non-resource dependent (residential) development in ESHA, and has not avoided and minimized damage to the chaparral areas. Nor does the project provide for the maximum amount of protection of maritime chaparral on site through the use of conservation easements. Therefore, this development is inconsistent with LCP policies 2.3.2.1, 2.3.2.2, 2.3.2.3, 2.3.2.4 and 2.3.3.A.2 which respectively require development in ESHA to be resource dependent; land adjacent to ESHA to be compatible with its long term maintenance and to not establish a precedent for continued land development; subdivisions to be allowed only where they do not impact ESHA; require development to be clustered to prevent habitat impacts, and to site and design development to protect the maximum amount of maritime chaparral on site. Thus, because of the project's inconsistencies with LCP policies designed to protect ESHA, the project must be denied as proposed and conditioned.

Additionally, the project is inconsistent with three other LCP policies designed to protect ESHA that were not cited by the appellants. Key Policy 2.3.1 requires protection, maintenance and enhancement and restoration of environmentally sensitive habitat areas. The proposed project does not protect all ESHA on site, and includes removal of maritime chaparral for development envelopes. In fact, the project has been conditioned (Exhibit E, Condition #9, Page 14) to "assure that except for approved structures and appurtenant uses (roads, driveways and septic systems)" development is not located within the maritime chaparral habitat, directly establishing that approved development on site will remove ESHA. Similarly, Policy 2.3.2.8 requires permitted development that is consistent with all other resource protection policies to minimize vegetation removal and land disturbance to the minimum amount necessary for structural improvements. This project is inconsistent because even if it were consistent with all other resource protection policies, the project has not been designed and sited to minimize the removal of indigenous vegetation, such as maritime chaparral and coast live oaks. Furthermore, the project is inconsistent with Policy 2.3.2.6 because it does not include the protection of ESHA through a deed restriction or conservation easement. Therefore, because this project does not



protect ESHA, it is not consistent with all other resource protection policies nor minimize vegetation removal, and it does not include a conservation easement over all ESHA on site, it is also inconsistent with LCP ESHA protection policies and thus must be denied as presented.

With regards to high erosion hazard areas, following appeal of the project, the applicant submitted a soils report to the Commission in a letter report dated November 20, 2003, indicating that the previous soils reports submitted for the project did not include a slope map or information regarding possible critical erosion potential, as required by CIP Section 20.144.070.A.1 (which required a determination of Critical Erosion Areas be made prior to the application being deemed complete).

Thus the geotechnical consultant submitted a map showing slopes of 25% or greater, with proposed building and septic envelopes superimposed on a revised tentative map dated revised May 31, 2002, and a soil map. This revised tentative map, which includes slopes over 25%, shows building and septic envelopes sized and located somewhat different from that included in the County's approval (dated May 9, 2001). It also shows that the new proposed access road crosses 25% slopes across lot 1 before extending along the southern parcel boundary to access lots 2 through 5, and would that any access road to Lot 6 would also have to cross slopes greater than 25%.

Additional information provided with this geotechnical update letter indicate that the two general soil classifications for the site include the Arnold Santa Ynez Complex, which has a moderate to high erosion hazard, and Arnold Loamy Sands, which have a high erosion hazard. However, both of the soil types have a K value of K=0.15, which is below the critical K value of 0.4, indicating that the project site is located in a non-critical erosion area. The report then determined that building sites could be located on terrain having a cross slope of less than 25% and that most lots provided adequate space to have building sites located outside areas with slopes greater than 25%. The geotechnical consultant specifically noted that the while Lot 2 was more constrained, the building area available in Lot 2 could provide a smaller building having a width ranging from 25 to 50 feet placed on the portion of the parcel with slopes less than 25%. Thus the geotechnical report indicated that there is the possibility to modify the size and location of buildings within proposed building envelopes to avoid slopes greater than 25%.

Since this information now allows a determination that the project is not located in a critical erosion area, for the purposes of a *de novo* hearing, consistency with LUP Policy 2.5.3.C.3.a, is irrelevant. However, the slope map indicates that the proposed access road would have to cross slopes greater than 25% in at least two locations. Several roads already exist on the subject property that, if modified and extended could be used to access the potential new lots in order to minimize the need to construct a new access road across slopes greater than 25%. Thus, while the project is consistent with development in non-critical erosion areas, the project could be modified to minimize grading in areas with slopes greater than 25%, as required by LUP policy 2.8.2.3. Therefore, as currently proposed, the project is inconsistent with LCP policies designed to minimize erosion potential from new land divisions and subsequent development.

Alternatives

Because of the groundwater overdraft problems that exist in the North County planning area, and specifically in the project area, there are basically no feasible alternatives for redesigning or resiting of



the subdivision, other than the status quo, because since there is not enough water available for even a greatly reduced buildout of existing lots, there is no water available for even one more new lot. Therefore, while one might be able to site and design the lots and building and septic envelopes to avoid impacts to environmentally sensitive habitat on site, until groundwater overdraft in the area has been resolved, any further subdivision and future development of the site would be inconsistent with protecting the long-term sustainability of groundwater resources and water supplies to existing residents and Coastal Act priority uses.

Conclusion

This analysis has revealed numerous fundamental inconsistencies with Monterey County LCP. The project as presented does not conform to the current zoning of the property, as it requires an LCP amendment that was not properly obtained. It is also inconsistent with LCP policies designed to protect water supply in the region, or those requiring the protection and maintenance of Environmentally Sensitive Habitat areas and the protection of water quality through a reduction in erosion. Therefore, because the proposed subdivision project is not consistent with the parcel's current zoning, it allows non-resource dependent development in ESHA, will increase water demand and has no proven long-term water source, it is inconsistent with LCP policies designed to protect the resources found at the project site, and must be denied.

E. California Environmental Quality Act (CEQA)

A. Applicable Authorities

The following policies relate to CEQA findings:

CEQA Guidelines (14 CCR) § 15042. Authority to Disapprove Projects. [Relevant Portion.] *A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.*

Public Resources Code (CEQA) § 21080(b)(5). Division Application and Nonapplication. ...(b) This division does not apply to any of the following activities: ...(5) Projects which a public agency rejects or disapproves.

CEQA Guidelines (14 CCR) § 15270(a). Projects Which are Disapproved. (a) CEQA does not apply to projects which a public agency rejects or disapproves.

B. Analysis

Section 13096 of Title 14 of the California Code of Regulations (14 CCR) requires that a specific finding be made in conjunction with coastal development permit applications about the consistency of the application with any applicable requirements of CEQA. This staff report has discussed the relevant coastal resource issues with the proposal. All above Coastal Act findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.



Pursuant to CEQA Guidelines (14 CCR) section 15042 "a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed."

Section 21080(b)(5) of the CEQA, as implemented by section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves.

Accordingly, the Commission's denial of this project represents and action to which the CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.

The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the project were approved as proposed.

